deliberately lying on this point but I think they had jumped to conclusions from the finding of P. 1 and P. 2 on the premises.

Another point regarding these instruments is that the charges were amended altogether three times in the course of the proceedings, one of the amendments having the effect of reversing the instruments as originally charged i.e. the appellant who was originally charged with using an iron pipe was ultimately charged with using an iron bar and *vice versa*. It appears, therefore, that the prosecution were not very clear in their minds on the subject of what instruments were used.

Counsel for the appellants pointed out that even the charges as finally amended by the learned Magistrate did not properly follow the wording of section 324 of the Penal Code. The wording actually used in the finally amended charges was :—

"Voluntarily caused hurt to . . . . . by means of a weapon of offence to wit, an iron rod/bar an instrument likely to cause death."

The proper wording would, of course, be :—

"An instrument. to wit an iron rod/bar, which, used as weapon of offence, was likely to cause death".

Both appellants were represented in the Court below but Counsel for the defence does not appear to have drawn that attention of the learned Magistrate to this defect in the amended charge and one of the grounds of appeal was that the charges as finally framed disclosed no offence known to the law. I am quite satisfied that the charges as finally framed gave the appellants ample notice of what they were charged with and that the slight defect in the wording in no way prejudiced either of the appellants. Nevertheless, I cannot help feeling that the wording used by the learned Magistrate in the final charges indicates that his attention was never properly directed to the precise nature of what has to be proved under section 324 when the weapon used is not an instrument for shooting, stabbing or cutting. There are some implements about which one can say simply by looking at them or handling them that, used as weapons of offence, they are likely to cause death; sometimes evidence on the point is desirable; but on a charge under section 324 there ought to be a specific finding in regard to this matter.

There are certain parts of a prosecution case which, as a matter of practice, the Courts always expect to be proved as strictly as possible and one of these is proof that an exhibit produced in Court is the very thing which was found or used on the scene and that it has not been tampered with in the meantime. After hearing the arguments on appeal I came to the conclusion that the prosecution had not in this case discharged the burden of proof which lay upon them in regard to the nature of the weapons used and that the appellants were, therefore, entitled to the benefit of the doubt upon this point.

Mr. Abdoolcader contended on behalf of the appellants that any doubt I might have as to the instruments used should go to the whole of the prosecution case and that the appellants should be acquitted. I was unable to accept this contention, however, as I think it is abundantly clear from the evidence and the facts found by the learned Magistrate that the appellants inflicted the wounds described by the Medical Officer upon these complainants. Whatever implements may have been used for the purpose there is no doubt that this hurt was inflicted voluntarily by the appellants. I therefore altered the conviction from one under section 324 to one under section 323 of the Penal Code. I did not consider the sentence of six months' imprisonment imposed by the learned Magistrate was excessive under section 324, but having reduced the charge I felt bound to reduce the sentence. The learned Deputy Public Prosecutor indicated that upon a charge under section 323 the imprisonment already undergone by the appellants appeared to him to be sufficient provided they were also bound over. I, therefore, altered the sentence to one of five weeks' imprisonment in the case of each appellant and also bound them over in the sum of $250 for a period of six months with one surety each to keep the peace.

Order accordingly.

Solicitors for the appellant: *Ong Huck Lim & Co.*

PUBLIC PROSECUTOR v. SUNDRAM (f)

[A. Cr. J. (Buhagiar J.) July 28, 1955]

[K. L. — Selangor Criminal Appeal No. 54 of 1955]

Road Traffic — Motor Vehicles Commercial Use Regulations, 1945, reg. 7 — Using a motor vehicle in contravention of the Haulage Permit — Excess of weight — Whether mens rea need be proved — Proof of Haulage Permit.

In this case the respondent was the registered owner of a motor lorry, the permissible laden weight of which was 8 tons. On January 10, 1955, an employee of the respondent was in charge of the said lorry and the load on the said lorry was found to be in excess of the permissible weight by over 2 tons. At the time the haulage permit was not proved but evidence as to the permissible laden weight was given by a Registration clerk. The learned Magistrate held that it had not been proved that the respondent had knowledge of the excess weight and was not responsible for the act of the servant.

Held: (1) the prohibition imposed by the Regulation is absolute and no *mens rea* need be proved in addition to the user to constitute the offence; (2) in this case the evidence of the Registration clerk as to the contents of the permit was wrongly admitted and if it is excluded there was no evidence on which the learned Magistrate could have convicted.

Cases referred to:—

(1) *James & Son Ltd. v. Smee* (1954) 3 All E.R. 273.

(2) *Ong Kim Piaw v. Public Prosecutor* (1949) M.L.J. 137.

MAGISTRATE'S CRIMINAL APPEAL.

E. Brown (Federal Counsel) for the appellant.

Respondent in person.

Buhagiar J. : — The respondent was charged in the Magistrate's Court at Kuala Lumpur with the following offence :—

"That you on 10.1.55 at about 6.40 p.m. at Pahang Road, Kuala Lumpur being the owner of Motor lorry No. BA 5710 did use the said motor vehicle on the public road in contravention to the conditions attached to the Haulage Permit issued in respect of the said vehicle to wit did carry a laden weight of 10 tons 4 cwt. 1 qr. 7 lbs., while under the conditions of the said permit, you are authorised to carry a laden weight of only 8 tons, an excess weight of 2 tons 4 cwt. 1 qr. 7 lbs. and that you thereby committed an offence under s. 7 of the Motor Vehicles Commercial Use (M.P.) Regulations."

The learned Magistrate found as a fact that the respondent was the registered owner of motor lorry BA 5710 and that the permissible laden weight of the said lorry was eight tons; on the 10th January, 1955 an employee of the respondent was in charge of the said lorry and the load on the said lorry was found to be in excess of the permissible weight by two tons 4 cwts. 1 qr. 7 lbs.

In his grounds of judgment the learned Magistrate said that the crux of the matter was whether the respondent, an employer was responsible for the criminal act of her servant. "If the Regulation in question" he said "is one of absolute prohibition than the employer bears the responsibility despite an apparent absence of *mens rea*..... On the other hand, if the regulation in question requires the element of knowledge, then the employer will only be liable if the prosecution has proved that he/she had knowledge of the servant's illegal act, and connived at its commission." The learned Magistrate held that Regulation 7 belonged to the latter category and as there was no evidence which showed that the respondent had any knowledge of any facts constituting use in contravention of the said Regulation, he acquitted and discharged the respondent.

The Public Prosecutor appealed against this order of acquittal on the ground that the learned Magistrate misdirected himself in law in holding that knowledge on the part of the respondent was an essential ingredient of the offence and that section 7 of the Motor Vehicles Commercial Use Regulations imposes an absolute prohibition against user in contravention of the regulation: no *mens rea,* apart from user need be shown.

The learned Public Prosecutor relied on the case of *James & Son, Ltd. v. Smee*[1] where it was held by the majority of the court that the prohibition on user of a motor vehicle imposed by regulations 101 and 75 of the Motor (Construction and Use) Regulations, 1951, is absolute in the sense that no *mens rea* need be proved in addition to the user to constitute the offence. Following the principles laid down in that case I held that the respondent should have been convicted.

I did not, however, set aside the order of acquittal of the learned Magistrate because the permit which contains the conditions under which the respondent is authorised to carry a laden weight not exceeding eight tons was not proved The only evidence there was as to such condition in the permit was that of P.W. 1, C. D. Rozario, a Registration Clerk at the Registrar & Inspector of Motor Vehicles, Selangor who said that the permissible laden weight of the said lorry was 59 cwts. 91 lbs. On the authority of *Ong Kim Piaw v. Public Prosecutor*[2], I held that the evidence of P.W. 1 to prove the contents of a document was wrongly admitted; excluding this improperly admitted evidence, there was no evidence on which the learned Magistrate could have convicted.

Order accordingly.